

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-2107

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United States of America,

Appellee,

v.

Eduardo Lara-Valadez,

Appellant.

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Appeal from the United States  
District Court for the  
District of Nebraska.

[UNPUBLISHED]

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Submitted: February 5, 2004

Filed: March 16, 2004

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Before BYE, McMILLIAN, and RILEY, Circuit Judges.

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PER CURIAM.

Eduardo Lara-Valadez (Lara-Valadez) pled guilty to conspiring to distribute 500 grams or more of a mixture containing methamphetamine, in violation of 21 U.S.C. § 846. The district court<sup>1</sup> sentenced him to 121 months in prison and 5 years supervised release. For the first time on appeal, Lara-Valadez argues that the Sentencing Guidelines for methamphetamine offenses are unconstitutionally severe, and that the district court should have departed downward based on his age and background.

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<sup>1</sup>The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

We reject both arguments. See United States v. Montanye, 996 F.2d 190, 192 (8th Cir. 1993) (en banc) (plain-error standard of review for issues not raised below). First, the constitutional argument is conclusory and unsupported. See United States v. Frieberger, 28 F.3d 916, 920-21 (8th Cir. 1994) (defendant who challenges constitutionality of methamphetamine Guidelines must demonstrate that Guidelines were based on forbidden or suspect ground or that they do not survive rational-basis review), cert. denied, 513 U.S. 1097 (1995). Second, Lara-Valadez did not request a departure below, and the district court was not required to grant one sua sponte.

Accordingly, we affirm.

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